

Rakesh Kumar

.....

Appellant

Vs.

Indresh Kumar and

One another

.....

Respondents

.....

Hon. P.C. Verma, J.

Hon. M.C. Jain, J.

This is an appeal against the judgment and decree dated 13.7.2001 passed by Civil Judge, Senior Division (F.T.C. VIII), Deharadun, in civil suit no. 113 of 1995 filed by the respondents against the appellants and another for specific performance of contract on the basis of agreement to sale dated 2.4.1991.

The contention of the appellant, inter alia, was that suit for specific performance was not maintainable as the property was to be purchased jointly by the respondents and one another. Since prospective co-purchaser Surendra Singh (father of the appellant, who was also arrayed as defendant in the suit) withdrew himself from the transaction of purchase, the contract could not be specifically performed.

This plea demands interpretation of the document i.e. the agreement of sale. We have perused carefully the document- agreement to sale. Clause X reads as under:

“YAH KI YAH ISPAST KIYA JATA HAI KI PRATIGYA BHUMI ME DITIYA PAKSHA KE SRI INDRESH KUMAR VA SRI D.P.SINGH NE 3/4 BHAG KA SODA KIYA HAI VA ISI ANUPAT SE BAYANA RASHI DI HAI AND DITIAY PAKSHA KE SRI SURENDRA SINGH NE 1/4 BANYANA RASHI DI VA ISI ANUPAT SE BHUMI KE DRAYA KARNE KA SODA KIYA HAI.”

It is clear from the aforesaid clause that it was specifically agreed between the parties that the sale would take place sharewise as specified herein and earnest money was paid accordingly. The defendant-appellant received earnest money worth Rs. 7,34,000/- from the contesting respondents.

The main point urged by the learned counsel for the appellant is that the trial Court wrongly interpreted clause X of the document and held that the suit was maintainable and decreed the suit for specific performance of the contract. Since Surendra Singh has backed out and did not now wish to purchase the property, the suit for specific performance of the contract could not have been decreed.

As noted above, clause X of the agreement specifically provides that the sale shall be made sharewise in favour of the respondents. Therefore, each of the respondents could file the suit for specific performance of the contract i.e. the sale of the property by the defendant appellant according to the convened share. If Surendra Singh had backed out, the right of other prospective co-vendees (plaintiff-respondents), namely, Indresh Kumar and Sri D.P. Singh could not be adversely affected and they were entitled to get the contract specifically decreed by the lower Court.

Learned counsel for the appellant further argued that since no partition has taken place, it is not clear and ascertainable as to which plot is to be sold to which

party. Therefore, it was not possible for the trial Court to have passed decree for specific performance. It is settled law that undivided share can be sold. Therefore, the defendant could sell the share in terms of the decree passed by the trial Court and the plaintiffs-respondent, after purchase of the property, could file suit for partition and get their share partitioned.

No other point was pressed before us.

For the reasons recorded above, we do not find any merit in this appeal. The appeal is dismissed.

Parties shall bear their own costs.

Dt. 06.10.2001
P.Singh

(P.C. Verma, J.)
(M.C. Jain, J.)